

§ 1.6664-4T

to the generally applicable rules concerning reasonable cause and good faith.

[T.D. 8381, 56 FR 67508, Dec. 31, 1991; T.D. 8381, 57 FR 6166, Feb. 20, 1992, as amended by T.D. 8617, 60 FR 45666, Sept. 1, 1995; T.D. 8790, 63 FR 66435, Dec. 2, 1998]

§ 1.6664-4T Reasonable cause and good faith exception to section 6662 penalties.

(a)–(e) [Reserved]

(f) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* For purposes of applying the reasonable cause and good faith exception of section 6664(c) to net section 482 adjustments, the rules of § 1.6662-6(d) apply. A taxpayer that does not satisfy the rules of § 1.6662-6(d) for a net section 482 adjustment cannot satisfy the reasonable cause and good faith exception under section 6664(c). The rules of this section apply to underpayments subject to the transactional penalty in § 1.6662-6(b). If the standards of the net section 482 penalty exclusion provisions under § 1.6662-6(d) are met with respect to such underpayments, then the taxpayer will be considered to have acted with reasonable cause and good faith for purposes of this section.

[T.D. 8656, 61 FR 4885, Feb. 9, 1996]

§ 1.6694-0 Table of contents.

This section lists the captions that appear in §§ 1.6694-1 through 1.6694-4.

§ 1.6694-1 Section 6694 penalties applicable to income tax return preparer.

- (a) Overview.
- (b) Income tax return preparer.
 - (1) In general.
 - (2) Signing and nonsigning preparers.
 - (3) Example.
- (c) Understatement of liability.
- (d) Abatement of penalty where taxpayer's liability not understated.
- (e) Verification of information furnished by taxpayer.
 - (1) In general.
 - (2) Example.
- (f) Effective date.

§ 1.6694-2 Penalty for understatement due to an unrealistic position.

- (a) In general.
 - (1) Proscribed conduct.
 - (2) Special rule for employers and partnerships.

26 CFR Ch. I (4-1-03 Edition)

(b) Realistic possibility of being sustained on its merits.

- (1) In general.
- (2) Authorities.
- (3) Examples.
- (4) Written determinations.
- (5) When “realistic possibility” determined.
 - (i) Signing preparers.
 - (ii) Nonsigning preparers.
- (c) Exception for adequate disclosure of nonfrivolous positions.

- (1) In general.
- (2) Frivolous.
- (3) Adequate disclosure.
 - (i) Signing preparers.
 - (ii) Nonsigning preparers.
- (A) Advice to taxpayers.
- (B) Advice to another preparer.
- (d) Exception for reasonable cause and good faith.
 - (1) Nature of the error causing the understatement.
 - (2) Frequency of errors.
 - (3) Materiality of errors.
 - (4) Preparer's normal office practice.
 - (5) Reliance on advice of another preparer.
- (e) Burden of proof.

§ 1.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

- (a) In general.
 - (1) Proscribed conduct.
 - (2) Special rule for employers and partnerships.
- (b) Willful attempt to understate liability.
- (c) Reckless or intentional disregard.
- (d) Examples.
- (e) Adequate disclosure.
 - (1) Signing preparers.
 - (2) Nonsigning preparers.
- (i) Advice to taxpayers.
- (ii) Advice to another preparer.
- (f) Rules or regulations.
- (g) Section 6694(b) penalty reduced by section 6694(a) penalty.
- (h) Burden of proof.

§ 1.6694-4 Extension of period of collection where preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

- (a) In general.
- (b) Preparer must bring suit in district court to determine liability for penalty.
- (c) Suspension of running of period of limitations on collection.
- (d) Effective date.

[T.D. 8382, 56 FR 67514, Dec. 31, 1991]

§ 1.6694-1 Section 6694 penalties applicable to income tax return preparer.

- (a) *Overview.* Section 6694(a) and section 6694(b) impose penalties on income

tax return preparers for certain understatements of liability on a return or claim for refund. The section 6694(a) penalty is imposed for an understatement of liability with respect to tax imposed by subtitle A of the Internal Revenue Code that is due to a position for which there was not a realistic possibility of being sustained on its merits. The section 6694(b) penalty is imposed for an understatement of liability with respect to tax imposed by subtitle A of the Internal Revenue Code that is due to a willful attempt to understate tax liability or that is due to reckless or intentional disregard of rules or regulations. See § 1.6694-2 for rules relating to the penalty under section 6694(a). See § 1.6694-3 for rules relating to the penalty under section 6694(b).

(b) *Income tax return preparer*—(1) *In general.* Solely for purposes of the regulations under section 6694, the term “income tax return preparer” (“preparer”) means any person who is an income tax return preparer within the meaning of section 7701(a)(36) and § 301.7701-15 of this chapter, except that no more than one individual associated with a firm (for example, as a partner or employee) is treated as a preparer with respect to the same return or claim for refund. If a signing preparer is associated with a firm, that individual, and no other individual associated with the firm, is a preparer with respect to the return or claim for purposes of section 6694. If two or more individuals associated with a firm are income tax return preparers with respect to a return or claim for refund, within the meaning of section 7701(a)(36) and § 301.7701-15 of this chapter, and none of them is the signing preparer, only one of the individuals is a preparer (i.e., nonsigning preparer) with respect to that return or claim for purposes of section 6694. In such a case, ordinarily, the individual who is a preparer for purposes of section 6694 is the individual with overall supervisory responsibility for the advice given by the firm with respect to the return or claim. To the extent provided in § 1.6694-2(a)(2) and § 1.6694-3(a)(2), an individual and the firm with which the individual is associated may both be subject to penalty under section 6694 with respect to

the same return or claim for refund. If an individual (other than the sole proprietor) who is associated with a sole proprietorship is subject to penalty under section 6694, the sole proprietorship is considered a “firm” for purposes of this paragraph.

(2) *Signing and nonsigning preparers.* A “signing preparer” is any preparer who signs a return of tax or claim for refund as a preparer. A “nonsigning preparer” is any preparer who is not a signing preparer. Examples of nonsigning preparers are preparers who provide advice (written or oral) to a taxpayer or to a preparer who is not associated with the same firm as the preparer who provides the advice.

(3) *Example.* The provisions of paragraph (b) of this section are illustrated by the following example:

Example. Attorney A provides advice to Client C concerning the proper treatment of a significant item on C’s income tax return. The advice constitutes preparation of a substantial portion of the return. In preparation for providing that advice, A discusses the matter with Attorney B, who is associated with the same firm as A, but A is the attorney with overall supervisory responsibility for the advice. Neither Attorney A nor any other attorney associated with A’s firm signs C’s return as a preparer. For purposes of the regulations under section 6694, A is a preparer with respect to C’s return and is subject to penalty under section 6694 with respect to C’s return. B is not a preparer with respect to C’s return and, therefore, is not subject to penalty under section 6694 with respect to a position taken on C’s return. This would be true even if B recommends that A advise C to take an undisclosed position that did not satisfy the realistic possibility standard. In addition, since B is not a preparer for purposes of the regulations under section 6694, A may not avoid a penalty under section 6694 with respect to C’s return by claiming he relied on the advice of B. See § 1.6694-2(d)(5).

(c) *Understatement of liability.* For purposes of the regulations under section 6694, an “understatement of liability” exists if, viewing the return or claim for refund as a whole, there is an understatement of the net amount payable with respect to any tax imposed by subtitle A of the Internal Revenue Code, or an overstatement of the net amount creditable or refundable with respect to any tax imposed by subtitle A of the Internal Revenue Code. The

net amount payable in a taxable year with respect to the return for which the preparer engaged in conduct proscribed by section 6694 is not reduced by any carryback. Tax imposed by subtitle A of the Internal Revenue Code does not include additions to the tax provided by section 6654 and section 6655 (relating to underpayments of estimated tax). Except as provided in paragraph (d) of this section, the determination of whether an understatement of liability exists may be made in a proceeding involving the preparer apart from any proceeding involving the taxpayer.

(d) *Abatement of penalty where taxpayer's liability not understated.* If a penalty under section 6694(a) or section 6694(b) concerning a return or claim for refund has been assessed against one or more preparers, and if it is established at any time in a final administrative determination or a final judicial decision that there was no understatement of liability relating to the return or claim for refund, then—

(1) The assessment must be abated; and

(2) If any amount of the penalty was paid, that amount must be refunded to the person or persons who so paid, as if the payment were an overpayment of tax, without consideration of any period of limitations.

(e) *Verification of information furnished by taxpayer—*(1) *In general.* For purposes of section 6694(a) and section 6694(b), the preparer generally may rely in good faith without verification upon information furnished by the taxpayer. Thus, the preparer is not required to audit, examine or review books and records, business operations, or documents or other evidence in order to verify independently the taxpayer's information. However, the preparer may not ignore the implications of information furnished to the preparer or actually known by the preparer. The preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. Additionally, some provisions of the Code or regulations require that specific facts and circumstances exist— for example, that the taxpayer maintain specific documents, before a deduction may be claimed. The preparer must

make appropriate inquiries to determine the existence of facts and circumstances required by a Code section or regulation as a condition to the claiming of a deduction.

(2) *Example.* The provisions of paragraph (e) of this section are illustrated by the following example:

Example. A taxpayer, during an interview conducted by the preparer, stated that he had paid \$6,500 in doctor bills and \$5,000 in deductible travel and entertainment expenses during the tax year, when in fact he had paid smaller amounts. On the basis of this information, the preparer properly calculated deductions for medical expenses and for travel and entertainment expenses which resulted in an understatement of liability for tax. The preparer had no reason to believe that the medical expense and travel and entertainment expense information presented was incorrect or incomplete. The preparer did not ask for underlying documentation of the medical expenses but inquired about the existence of travel and entertainment expense records. The preparer was reasonably satisfied by the taxpayer's representations that the taxpayer had adequate records (or other sufficient corroborative evidence) for the deduction of \$5,000 for travel and entertainment expenses. The preparer is not subject to a penalty under section 6694.

(f) *Effective date.* Sections 1.6694-1 through 1.6694-3 are generally effective for documents prepared and advice given after December 31, 1991. However, § 1.6694-3(c)(3) (which provides that a preparer is not considered to have recklessly or intentionally disregarded a revenue ruling or notice if the position contrary to the ruling or notice has a realistic possibility of being sustained on its merits) is effective for documents prepared and advice given after December 31, 1989. Except as provided in the preceding sentence, section 6694 and the existing rules and regulations thereunder (to the extent not inconsistent with the statute as amended by the Omnibus Budget Reconciliation Act of 1989), and Notice 90-20, 1990-1 C.B. 328, apply to documents prepared and advice given on or before December 31, 1991. For the effective date of § 1.6694-4, see § 1.6694-4(d).

[T.D. 8382, 56 FR 67514, Dec. 31, 1991; T.D. 8382, 57 FR 6061, Feb. 19, 1992]